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July 31, 2003

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Washington, D.C. 20554

**RE:** Comments of Exelon Corporation filed February 10, 2003, in Docket WT02-55

Dear Ms. Dortch:

Attached are the Comments of Exelon Corporation dated February 10, 2003, that I am re-submitting for filing in Docket WT02-55. The comments were originally filed with the Commission electronically on that date and I received a receipt and confirmation number. It was recently discovered, however, that the filing was never uploaded to the docket's electronic file for reasons that are unknown despite the best efforts of ECFS Help Desk personnel to track down the problem.

Thank you for your assistance in this matter.

Sincerely,



Michael S. Pabian

MSP:av  
Attachment

**Before the  
Federal Communications Commission  
Washington DC**

In the Matter of	)	
	)	
Improving Public Safety Communications	)	
In the 800 MHz Band	)	WT Docket No. 02-55
	)	
Consolidating the 900 MHz Industrial/Land	)	
Transportation and Business Pool Channels	)	

**COMMENTS OF EXELON CORPORATION  
ON THE SUPPLEMENTAL COMMENTS  
OF THE PRIVATE WIRELESS COALITION**

Exelon Corporation submits these comments on the Supplemental Comments of the Private Wireless Coalition (“PWC”) and others supplementing their so-called “Consensus Plan” filed in response to the Commission’s Notice of Proposed Rule Making in this proceeding<sup>1</sup>, hereinafter referred to as the “PWC Plan.” The Commission should not adopt the Plan as the solution to the problem of interference in the 800 MHz band. The Plan is flawed and there are more focused and economic options available.

At the outset, Exelon must reiterate that, although it is labeled as a “consensus plan”, neither Exelon nor the United Telecom Council (“UTC”) – the industry group representing the interests of critical infrastructure service providers such as Exelon’s utility subsidiaries (PECO Energy Company (“PECO”) and Commonwealth Edison Company) – were invited to partake in the development or modification of the Plan.

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<sup>1</sup> *In the Matters of Improving Public Safety Communications in the 800 MHz Band, Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels*, WT Docket No. 02-55, Notice of Proposed Rulemaking, FCC 02-81, released March 15, 2002 (“NPRM”).

**I. Exelon supports the comments of UTC/EEI.**

Exelon supports the joint comments of the UTC and the Edison Electric Institute (“EEI”) on the plan, especially with respect to its opposition to mandatory relocation of incumbent systems in the 800 MHz band and its thoughtful recommendation for correction of interference problems through market-based solutions (whereby the party causing the interference is responsible for its resolution) coupled with real improvements in technical rules so that no licensee may cause interference and still remain “in compliance” with the Commission’s rules.

The UTC/EEI comments correctly point out that the PWC Plan is a private contract, which was negotiated in secret without the participation of the vast number of the affected parties. The PWC Plan simply does not have public consensus and cannot be adopted in a rulemaking proceeding.

UTC/EEI also show that the PWC Plan sets up a structure that is at odds with the flexibility contemplated by current and proposed Commission spectrum policy (as articulated in the recent Spectrum Policy Task Force Report). Licensees must be required to remedy any interference they cause and permitted the flexibility to enter into market agreements to do so. The Plan’s more stringent pool categorization based on type of licensee is heading in the wrong direction. Likewise, the Plan effectively limits all licensees except Nextel to using current technology – the result of the “cellular” barrier at 861 MHz – no matter how carefully engineered those systems are to avoid interfering with other licensees. In short, the Plan is too flawed and should be rejected.

**II. Exelon's PECO subsidiary is a part of the nation's critical infrastructure, and its 800 MHz radio system is crucial to its operations to ensure an ongoing energy supply.**

PECO is engaged principally in the purchase, transmission, distribution and sale of electricity to residential, commercial, industrial and wholesale customers and in the purchase, distribution and sale of natural gas to residential, commercial and industrial customers. PECO is a public utility under the Pennsylvania Public Utility Code. As a result, PECO is subject to regulation by the Pennsylvania Public Utility Commission (PUC) as to electric distribution rates, retail gas rates, issuances of securities and other aspects of PECO's operations. PECO is also subject to regulation by the Federal Energy Regulatory Commission (FERC) as to transmission rates and certain other aspects of its business, including interconnections and sales of transmission related assets.

PECO's traditional retail service territory covers 2,107 square miles in southeastern Pennsylvania. PECO provides electric delivery service in an area of 1,972 square miles, with a population of approximately 3.8 million, including 1.5 million in the City of Philadelphia. Natural gas service is supplied in a 1,625 square mile area in southeastern Pennsylvania adjacent to Philadelphia, with a population of 2.3 million. PECO delivers electricity to approximately 1.5 million customers and natural gas to approximately 440,000 customers. PECO is also the provider of last resort for electric power and energy for those customers who do not take service from an alternate supplier. PECO is obligated to provide a reliable energy delivery system under cost-based rates. PECO's customers include the federal, state and municipal government offices and facilities within its service area, as well as the region's public safety agencies.

PECO's energy transmission and distribution system is part of the critical infrastructure of southeastern Pennsylvania. Both the Pennsylvania Office of Homeland Security (PA OHS) and the Pennsylvania Emergency Management Agency (PEMA) recognize the importance of protecting electric utilities as part of the nation's anti-terrorism campaign. Protective measures focus on ensuring the security of energy supplies to Pennsylvania's citizens.

PECO has held FCC licenses for its 800 MHz Private Land Mobile Radio system for over fifteen years. It has operated the system in compliance with applicable FCC regulations, including the requirement to avoid interference with other licensees.

PECO's private 800 MHz radio communication system is a critical part of its infrastructure necessary to keep the supply of energy reliable and secure. It is two-way and is used for voice dispatch of construction, repair and storm restoration crews, supporting field line crews, field service personnel, and customer response and emergency preparedness functions.

In the event of damage to PECO facilities and equipment, whether caused by natural events, terrorism, or otherwise, PECO's radio system must be available and fully functioning in order to ensure the restoration of critical services. Should a power outage occur, public safety agencies, most notably police and fire departments, would be among the primary customers to benefit from the quick restoration of service, especially to power their own private radio communication systems.

### **III. The PWC Plan would negatively affect PECO's radio communications system.**

The PECO radio communications system is a Private Land Mobile Radio (PLMR) system in the Business/Industrial Land Transportation category. It has five FCC licenses on the 800 MHz spectrum, with thirty-one channels. Twelve channels are in the General Category and under the PWC Plan would be relocated to the 2 MHz Guard Band, 814-816/859-861 MHz, contiguous with the Nextel Commercial Mobile Radio System (CMRS) channels. An additional six channels are currently located in the proposed Guard Band. The remaining thirteen channels are in the interleaved channels and would be neither relocated nor located in the Guard Band. Thus, the end result of the PWC Plan to restructure the 800 MHz band would be the placement of eighteen of the thirty-one PECO radio communications system channels in the proposed Guard Band.

Therefore, the PWC Plan is problematic because it would have extreme negative impacts on the operation of PECO's radio communications system, which could only be remedied at a significant cost. This result is simply unacceptable. The reasons for PECO's objections are set forth below.

#### **A. Interference**

Location in the Guard Band will likely result in significant interference with PECO's radio communications system. First, location next to the Nextel channels will likely result in the very same type of interference for PECO's radio system that has been occurring to public safety licensees and has given rise to this rule making proceeding in the first instance. Second, it is probable that channels in the Guard Band will be subject to tighter spacing, resulting in the possibility of additional interference unless technical remedial measures are taken. Given the dual importance of public safety and the critical

infrastructure industries, it makes no sense to cure the interference problems of public safety by creating new interference problems for critical infrastructure service providers.

This new location of these PECO channels in the Guard Band would be at odds with the current FCC policy that licensees forced to relocate are to receive comparable channels. The new location in the Guard Band would clearly be a degradation of PECO's channels and would result in serious problems for the PECO radio system.

#### B. Financial Consequences

The options provided to PECO by the PWC Plan to address these problems created by placement in the Guard Band would impose significant financial burdens on PECO. If PECO relocates outside of the Guard Band, it must do so only with the approval of the RCC and then at PECO's own expense and with no reimbursement from the Relocation Fund. If PECO stays in the Guard Band, there is no assurance that it will be reimbursed by the Relocation Fund for the full cost of additional technology measures necessary to remove any interference caused by Nextel or resulting from the tighter channel spacing. If not reimbursed, PECO would be left with the very uncertain prospect of recovering these costs under cost-based public utility rates charged to its customers. Such recovery would require a general rate base approval by the PUC, and even then would be subject to certain PUC caps on transmission and distribution expenses.

PECO believes that more than the cost of re-tuning its existing radios will be necessary to maintain the same quality of radio service that it has with its current channels. Additional or improved combiners and new antennas would also be likely. No definitive calculations have been performed, but preliminary estimates indicate that the cost could be in excess of \$2 million. There are a number of uncertainties that could

impact the final cost – specific location of the PECO channels in the Guard Band, the proximity to the Nextel channels, and the tightness of the channel spacing, among other factors. In addition, should greater technical requirements be imposed on receivers to address out-of-band-emission (OOBE) and intermodulation interference, then additional costs would be incurred. For example, should such requirements necessitate that PECO purchase new radios, the additional cost would be approximately \$ 5 million.

Finally, the PWC Plan would require that PECO increase its signal strength to  $-95$  dBm or better in order for interfering CMRS cellular systems (e.g., Nextel) would be required to correct the interference. In effect, this requires that PECO incur a significant cost as a threshold before the commercial cellular systems would be required to remedy interference that they are causing to PECO. This enhanced signal strength requirement would result in PECO doubling the number of its base stations at an approximate initial cost of \$15 million (assuming new tower construction) or incur increased tower lease costs, assuming that it could find the available space on existing towers.

Given these uncertainties, there is no assurance that the Nextel commitment to contribute \$150 million to the Relocation Fund for non-public safety licensees will be adequate. In light of the fact that the recent tremendous growth of the cellularized radio systems of the SMR licensees (including to a significant extent Nextel) are responsible for the public safety interference, and the obvious benefits to Nextel that would result from the restructuring of the 800 MHz spectrum, that Nextel should be responsible for the full reimbursement of all costs incurred by the private licensees resulting from implementation of the PWC Plan, without a cap on such financial responsibility.



### C. Severe Restrictions on Future Channel Expansion

The likely impacts on the PECO radio system of the PWC Plan go beyond interference and expense (however significant in their own right), because the proposed restructuring of the 800 MHz band would leave few, if any, channels available for future expansion for PECO and the other critical infrastructure entities. Should the public safety agencies receive the unallocated channels vacated by Nextel in the interleave frequencies, using the priority granted to them during the five year period after the 800 MHz spectrum restructuring, then this would leave no channels available for future expansion. It is likely that PECO would need additional channels in the future to ensure coverage of the its radio communications system as population expansion occurs in its customer service territories. The lack of additional channels would also impose significant limitations on non-public safety licensees in implementing advanced technology in the 800 MHz band in the future. Therefore, critical infrastructure industries should also be eligible for these vacated Nextel channels on a priority basis, or the Commission should specifically reserve some of the 800 MHz spectrum for future expansion needs.

### IV. The PWC Plan should be rejected.

The record in this docket is now full of references to the hardship, expense, and risk that would be involved with the mandatory relocation of existing incumbent licensees – especially providers of critical infrastructure services such as electric and gas utilities. Exelon again calls the Commission’s attention to Congress’s particular concern for “the reliable provision of ...physical infrastructure services...including telecommunications, energy, financial services, water, and transportation.” In passing the

Critical Infrastructures Protection Act of 2001 declared it to be the policy of the United States:

that any physical or virtual disruption of the operation of the critical infrastructures of the United States be rare, brief, geographically limited in effect, manageable, and minimally detrimental to the economy, human and government services, and national security of the United States...

See 42 USCS §5195c(b), (c).

Because of the risk and uncompensated costs to incumbent licensees (including critical industry service providers) associated with the PWC Plan, the Commission should reject it. Instead, Exelon continues to offer its Plan as a fair, highly workable and efficient solution – one that is completely consistent with the “first-in-time” policy endorsed by the Commission in other contexts and “in synch” with the comments of UTC/EEI. Specifically, any party newly arriving at a frequency (or making major changes to its system) should be technically and financially responsible for resolution of any interference caused by its operations to the operations of incumbent licensees, even if it is operating within published guidelines while causing the interference. The Commission should adopt rules that provide that the interfering party would have to resolve the interference problem within 60 days or cease operations unless an extension were agreed to by all affected parties. There would be no need for the Commission to specify the type of resolution that would be required. Economics would dictate whether it would be more efficient for the interfering party to modify its own equipment or pay the party experiencing interference to modify its equipment or even to move.

Such approach would avoid the massive dislocations involved with forced moves or rebanding, which may not even be necessary in locations in which there is no

interference “victim” and which may not even solve the interference problem in locations in which there is.

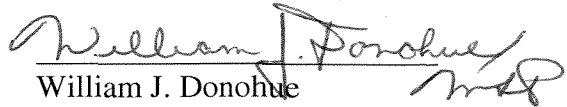
Exelon, therefore, respectfully requests that the Commission reject the so-called “consensus plan” and, instead, adopt rules consistent with these comments.

Respectfully submitted,



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